

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2015-125712-001 DT

02/01/2018

HONORABLE DOUGLAS GERLACH

CLERK OF THE COURT  
C. Curley  
Deputy

STATE OF ARIZONA

RICHARD E SERDEN

v.

JEOFREY MUTINDA KAVU (001)

DIEGO RODRIGUEZ

MINUTE ENTRY

A Motion to Strike Dangerous Instrument Aggravator was filed on behalf of defendant Jeofrey Kavu. The court has considered the motion and the response filed on behalf of the State of Arizona. No reply was filed within the time set by applicable rule. The court has concluded that the issue presented has been fully briefed, and oral argument will not assist a decision.

The jury in this matter returned a verdict finding Kavu guilty of negligent homicide. After reaching that determination, the jury also found that the automobile that caused the victim's death was a dangerous instrument. The motion maintains that, for purposes of a sentencing, a dangerous instrument aggravator cannot apply to a crime of negligence.

The contention on which the motion is premised has been considered and rejected by Arizona appellate courts. *E.g., State v. Venegas*, 137 Ariz. 171, 175, 669 P.2d 604, 608 (App. 1983) (rejecting argument that a defendant must intend to use an automobile as a deadly weapon before there can be a finding of dangerousness); *see also State v. Tamplin*, 146 Ariz. 377, 380, 706 P.2d 389, 392 (App. 1985).

**IT IS ORDERED** denying the Motion to Strike Dangerous Instrument Aggravator that was filed on behalf of defendant Jeofrey Kavu.